

Summary of Changes to Montgomery County Code, Chapter 11B,
Contracts and Procurement, and related Executive Regulations

Amendments to Montgomery County Code,
Chapter 11B, Contracts and Procurement, Effective April 1, 2010

Section 11B-4

Add expert witnesses and advertising to the items that are exempt from the procurement law.

Recognizes that experts and advertising are specialized, focused and, therefore, not subject to competition. Advertising is currently waived and expert witness authority has been delegated; this permanently exempts both from required competition.

Section 11B-17A

Modify internet posting requirements to conform to the new solicitation threshold dollar amounts established by Executive Regulations

Formal solicitation thresholds are detailed in recommended changes to the Executive Regulations

Section 11B-18

Require a surety company that provides bid security for a competitive sealed bid to be licensed to do business in Maryland.

This change facilitates enforcement in the event that the bond needs to be called and ensures that the company has a registered agent in Maryland.

Section 11B-33A

Wage Law:

(1) Repeal language exempting contractors with fewer than 10 employees from the Wage Law.

(2) Continues to Make submission of compliance certification required upon bid or proposal submission but, under certain circumstances, allows the deficiencies to be corrected.

(1) Will permit employees of small companies to enjoy the wage benefit (for which we compensate the contractor under its pricing).
(2). Will allow County to accept bids/proposals and provide vendors limited timeframe to submit wage certification after submission, under certain circumstances. In contrast current law requires all bids/proposals without wage submission to be rejected.

Section 11B-35

Authorize a Using Department to proceed through the administrative dispute resolution process.

Currently, a Using Department must file a suit in court if it cannot resolve a problem with a contractor—only the contractor may initiate the administrative dispute resolution process under the existing law. The administrative process provides a less expensive and timely option for resolving claims and disputes than proceeding to court each time.

Section 11B-67

Authorizes the Director of the Department of General Services to investigate and verify the information received in a local small business application.

Under current law DGS does not have authority to investigate claims of a business self-certifying its claim to qualify as a local small business.

Summary of Amendments to Regulations, Effective April 1, 2010

11B.00.01.02.4.75

Change definition of "Proposed Award," to permits completion of negotiations prior to posting a proposed award and to accommodate other changes to the procurement process and selection of contractors.

See also 11B.00.01.03.2 below

Regulations currently require advertising notice of award intent, which exposes files to review and diminishes County's negotiating position.

11B.00.01.03.2

Revise the contract award process to permit the Director of the Department of General Services to negotiate with more than one vendor before posting notice of the proposed contract award.

The current method limits the negotiation possible before selection of the awardee and potentially limits the ability of the County to obtain the best outcome.

11B.00.01.04.1

Increase the threshold dollar amounts for each category of solicitation. Increase direct purchase threshold from \$5,000 to \$10,000, Informal threshold from under \$25,000 to under \$100,000 and formal solicitation threshold from \$25,000 to \$100,000.

The current thresholds have existed unchanged since originally established over 20 years ago. The new thresholds will give departments the ability to procure goods and services faster.

11B.00.01.04.1.2.4

Permits DGS Director to add members to the QSC when appropriate and allow the County to negotiate with more than one vendor simultaneously or successively.

This promotes competition and enables the County to ensure that it acquires the best result and keeps the negotiations on a level playing field until the selection of a vendor is made.

11B.00.01.04.1.12.2 and

11B.00.01.15.5

Permit the DGS Director to make a non-competitive award for developer proprietary software maintenance or support.

Streamlines the process for these services, as current regulation requires sole source approval from the Contract Review Committee.

11B.00.01.07.1

Increase direct purchase threshold from \$5,000 to \$10,000 in keeping with threshold increase noted in 11B.00.01.04.1 above.

As with the other threshold changes, this change reflects the reality of the marketplace. Contracting activity will continue to be tracked across the entire spend landscape regardless of threshold levels.

11B.00.01.07.4

Amend certification of MFD businesses to permit alternative non-self-certifying programs in addition to Federal and State programs.

MFD is currently limited to MDOT certification. This will allow for other non self-certified programs (Federal 8a, WMATA). Permits broader pool of certified businesses and eliminates time required to obtain MDOT certification.

11B.00.01.14.

Clarify the timing for filing a protest, expand the disputes process to allow the Using Department to initiate the administrative dispute resolution process to resolve disputes and claims, and clarifies CAO authority to resolve appeals.

Places 10-day protest period after the date of Notice of Proposed Award; per Code change noted previously, allows Using Department to initiate the administrative process to resolve disputes and claims; and allows CAO to resolve an appeal through a summary disposition rather than always requiring an evidentiary hearing.